STREET ASSESSMENT—INVALIDITY—RECOVERY BY TAXPAYER—DURESS—KNOWLEDGE OF ILLEGALITY.—HAVEN ET AL V. MAYOR, ETC., 73 N. Y. Supp. 678.—The plaintiff with knowledge of invalidity of a street assessment paid the same under protest, and then sought to recover on grounds of duress and illegality. *Held,* that benefit by improvement does not exclude right, but knowledge of illegality at time of payment, though made under protest, prevents recovery.

A tax assessment has been regarded as similar to a judgment, the execution of which could not be resisted, and should, therefore, be paid and if illegal be appealed from and reversal obtained for error. *Peyser v. Mayor, etc.,* 70 N. Y. 497. The court now seems to regard this as true only where the taxpayer at the time of paying is ignorant of the facts establishing illegality.

TAXATION—BANK CAPITAL—EXEMPTION IN CHARTER—RES ADJUDICATA.—UNION AND PLANTERS' BANK V. CITY OF MEMPHIS, 111 Fed. 561 (Tenn.).—Its charter provided bank should pay the State "an annual tax of one-half of one per cent. on each share of stock subscribed, which shall be in lieu of all other taxes." In former suit between same parties on like subject matter Supreme Court of Tenn. held bank liable only for stipulated tax on its shares of stock. This decision was pleaded in estoppel to suit for enjoining collection of taxes by city. *Held,* bank was not exempt from *ad valorem* tax on its capital, and former decision, no bar.

Shares in hands of stockholders are exempt—divided court. *Farrington v. Tenn.,* 95 U. S. 679; and also corporate capital, *Memphis v. Hernando Ins. Co.,* 6 Bax. 527; *contra Bk. of Com. v. Tenn.,* 104 U. S. 493; *Shelby Co. v. U. and P. Bk.,* 161 U. S. 149. Bank building alone is exempt, not collateral holdings of real estate, surplus profit, nor corporate capital.

The adverse adjudication of demand for a tax is an estoppel to demand for same tax for other years. *So. Pac. R. Co. v. U. S.,* 168 U. S. 1. Such estoppel not allowed by usage of Tenn., hence held no bar, as U. S. court gives a judgment no greater efficacy than State court allows. This precise question seems not to have arisen heretofore.

TAXATION—FRANCHISE TAX—PATENT RIGHTS.—PEOPLE EX REL U. S. ALUMINUM PRINTING CO. V. KNIGHT, 73 N. Y. Supp. 745. The comptroller, in determining the franchise tax of a corporation, included in the appraised capital the value of certain patent rights owned by them. *Held,* that patent rights, being non-taxable, are excluded from such assessment. Smith, J., dissenting.

This is exactly contrary to the decisions of the same court in *People v. Wemple,* 61 Hun. 53 and *People v. Campbell,* 138 N. Y. 543, which on the authority of *People v. Insurance Co.,* 92 N. Y. 328, held that patent rights could be included in capital stock for assessment purposes, on the ground that the franchise tax was upon the franchise alone and not upon the investment. But there is a tendency to disregard this distinction in the later cases of *People v. Assessors,* 156 N. Y. 417, and *Johnson Co. v. Roberts,* 159 N. Y. 70, and to hold federal grants of privileges exempt from any assessment.

WARRANTY—HEARSAY.—IVES V. ELLIS, 62 N. E. 138 (N. Y.).—An action for the breach of an express warranty in the sale of an alleged ancient document. The defendant offered in evidence a letter written by him to the plaintiff, containing the opinion of experts, which plaintiff had requested fifteen months after purchase, as to the genuineness of said document. *Held,* there was error in admitting it. O'Brien & Cullen, J. J., dissenting.

The diversity of opinion regarding the admissibility of this letter, is due to the obvious distinction between its contents and the relevancy of its writing to the issue of warranty. Though admitted to show compliance with the plaintiff's request, and though the jury was charged to disregard its contents, Parker, C. J., held that the error was not cured, citing *People v. Schooley,* 43 N. E. 536; *Holmes v. Moffat,* 24 N. E. 275. O'Brien, J., dissenting, held the seeking of expert opinion to be irreconcilable with the claim of a warranty, and that the error was cured. Landon, J.. concurring, held the claim of a warranty and the seeking of expert opinion, not to be inconsistent.